

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE**

In Re: David Wisneski, E.M.T.
EMT Certification #92-1563

Petition No. 990511-070-002
February 17, 2000

PROPOSED MEMORANDUM OF DECISION

Statement of Facts

On October 28, 1999, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") concerning emergency medical technician ("EMT") certificate number 92-1563, held by David Wisneski ("respondent"). H.O. Exh. 1. The Charges allege grounds for disciplinary action pursuant to §§19a-17 and 19a-180 of the Connecticut General Statutes ("the Statutes"), and §19a-179-15a of the Regulations of Connecticut State Agencies ("the Regulations").

On November 5, 1999, the Commissioner of the Department designated the undersigned as hearing officer to rule on all motions, and recommend findings of fact and conclusions of law to the Commissioner. H.O. Exh. 2.

On December 6, 1999, a hearing was held. Stephen Miltimore, Esq. presented the Department's case. Respondent was not represented by an attorney and did not appear, nor did he file an answer. The record remained open until January 14, 2000, to permit the Department to present additional evidence regarding the sufficiency of service of the Charges and Notice of Hearing.¹

The Proposed Memorandum of Decision is based entirely on the record and sets forth findings of fact, conclusions of law, and a proposed order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered and *vice versa*. *SAS Inst., Inc. v. S&H Computer Systems, Inc.*, 605 F. Supp. 816 (Md. Tenn. 1985).

¹ Additional documentation was submitted by the Department on January 7, 2000, was marked for identification as Exhibit 6, and entered into the record.

Findings of Fact

After considering the entire record, this hearing officer proposes the following findings of fact:

1. Respondent is, and at all relevant times has been, certified as an EMT, holding certification number 92-1563. Exh. 2.
2. From approximately September 8, 1992 until approximately October of 1998, respondent was a volunteer member of the South Windsor Ambulance Corps as an emergency medical technician. Exh. 3.
3. From approximately October of 1994 to approximately October of 1998, respondent served as Treasurer of the South Windsor Ambulance Corps. Exh. 3.
4. During the four years respondent served as Treasurer, respondent took for his own personal use, approximately \$12,000 from the South Windsor Ambulance Corps. Exh. 3 and 4.
5. Due to this theft, on April 29, 1999, respondent was convicted in Superior Court GA-12 of larceny in the first degree. Exh. 4.
6. The Department exercised due diligence in confirming respondent's address, and in serving respondent with the Statement of Charges and the Notice of Hearing. Exh. 5.

Conclusions of Law and Discussion

The hearing in this matter was conducted in accordance with Chapter 54 of the Statutes and §§19a-9-1 *et seq.* of the Regulations. In bringing this action, the Department seeks disciplinary action as set forth in §§19a-17 and 19a-180(b) of the Statutes, taken in conjunction with §19a-179-15(a) of the Regulations. Section 19a-180(b) of the Statutes provides, in pertinent part, that an EMT certification may be suspended or revoked or subjected to any disciplinary action specified in §19a-17 of the Statutes, if the EMT fails to maintain standards or violates any regulation adopted under any section of Chapter 368d applicable to the EMT.

Section 19a-179-15(a) of the Regulations also provides that disciplinary action may be taken against an EMT certification when there has been a substantial failure to comply with §§19a-174 through 19a-199, inclusive, of the Statutes, or when the EMT has failed to maintain the standards of the profession.

Since respondent failed to appear or file an Answer, there was no evidence presented, rebutting or refuting the Department's evidence. Respondent's commission of a criminal offense while engaging in activities related to his certification as an EMT, constitutes a failure to maintain the standards of the emergency services profession. Such conduct is sufficient grounds to impose disciplinary action on his certificate pursuant to §19a-180(b) of the Statutes and §19a-179-15(a) of the Regulations.

The Department did not argue for or seek any particular remedy in this matter; and, §19a-17 provides a range of disciplinary actions that may be ordered under such circumstances. In this case, there is no evidence of any prior disciplinary action or any wrongdoing in the provision of care. However, the conduct underlying the criminal conviction occurred while respondent was performing his duties as Treasurer of the South Windsor Ambulance Corps, and thus, bears a relationship to his certification as an EMT.

While there is scant evidence regarding the manner in which the defalcation was discovered, it appears that when a subsequent treasurer uncovered the wrongdoing, respondent surrendered to the police and admitted his thefts. Exh. 1 and 3. As set forth in respondent's statement (Exh. 3), he cashed checks over a four year period of time and purchased instant lottery tickets with the money. He acknowledges that he did so because he has a "gambling problem." As part of a plea agreement, he was ordered to make full restitution and to participate in counseling focused on gambling and impulse control. No evidence was presented to establish whether he has successfully completed this counseling, or appears to have benefited from it.

Based on the foregoing, it is recommended that the following disciplinary action be ordered:

1. That respondent pay a civil penalty of \$500 by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable within sixty days of the effective date of this Decision.
2. Respondent's certification shall be placed on probation for a period of three years, under the following terms and conditions:

- A. Within thirty days of completion of the court-ordered counseling, respondent shall provide proof to the satisfaction of the Department that he successfully completed such counseling. If respondent's court-ordered counseling continues throughout the duration of the probation, such counseling shall satisfy the terms of probation set forth in paragraph 2B below, and his court-ordered counselor shall provide the reports required in paragraph 2B below.
- B. At least monthly for a period of one year, and quarterly thereafter, throughout the period of probation, respondent shall meet with a therapist approved by the Department ("the therapist").
 - (1) Respondent shall provide a copy of this Decision to the therapist at or before his first meeting with the therapist.
 - (2) The therapist shall furnish written confirmation to the Department of his or her engagement in that capacity and receipt of a copy of this Decision with fifteen days of receipt.
 - (3) If the therapist determines that more frequent sessions are necessary or recommended, respondent shall attend therapy as recommended.
 - (4) The therapist shall submit reports at least quarterly for the duration of probation, which shall address, but not necessarily be limited to, respondent's gambling addiction.
 - (5) The therapist shall immediately notify the Department in writing if the therapist believes respondent's continued practice poses a danger to the public, or if respondent discontinues therapy and/or terminates his or her services, or in any other way fails to comply with this Decision.
- C. Respondent shall attend "anonymous" or support group meetings on an average of four times per month, and shall provide monthly reports to the Department concerning his record of attendance.

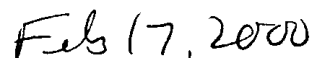
- D. During the period of probation, respondent shall report to the Department any time he is arrested within fifteen days of such event.
 - E. Respondent shall provide his employer at each place where respondent is employed throughout the probationary period with a copy of this Decision within fifteen days of its effective date, or within fifteen days of commencement of employment with a new employer.
 - F. Respondent is prohibited throughout the period of probation from holding any position with any emergency service that would provide him access to any funds.
3. All correspondence and reports are to be addressed to:
- Bonnie Pinkerton, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS#12HSR
P.O. Box 340308
Hartford, CT 06134-0308
4. Respondent shall bear all costs associated with complying with this Order.

Conclusion

I respectfully recommend that the Commissioner of the Department issue an order assessing a civil penalty and placing respondent's EMT certificate number 92-1563 on probation as set forth in this Order.



Donna Brewer, Esq.
Hearing Officer



Date



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

David Wisneski
75 Deming Street
South Windsor CT 06074

CM RRR #Z320233813
& First Class Mail

IN RE: David Wisneski, E.M.T. - Petition No. 990511-070-002

FINAL MEMORANDUM OF DECISION

In accordance with Connecticut General Statutes Section 4-180, the attached Proposed Memorandum of Decision issued February 17, 2000, by Hearing Officer Donna B. Brewer is hereby adopted as the final decision of the Commissioner of the Department Health in this matter. A copy of the Proposed Memorandum of Decision is attached hereto and incorporated herein.

Date

3/13/00


Joxel Garcia, M.D.
Commissioner



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